

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

LAVERN BERRYHILL,)	
)	
Petitioner,)	
)	
v.)	CIV-13-1083-W
)	
ANITA TRAMMELL,)	
et al.,)	
)	
Respondents.)	

REPORT AND RECOMMENDATION

Petitioner, a state prisoner appearing pro se, brings this action seeking habeas relief pursuant to 28 U.S.C. §2254. The matter was referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. §636(b)(1)(B). On October 15, 2013, the undersigned reviewed the pleadings filed by Petitioner and entered an Order notifying Petitioner that the documents filed on October 9, 2013, were deficient because the motion to proceed *in forma pauperis* was not submitted and/or the \$5 filing fee had not been paid and that the petition was not complete and/or on the proper §2254 form. Petitioner was directed to cure this deficiency on or before November 4, 2013. The Petitioner was further cautioned that the undersigned would recommend that the action be dismissed without

prejudice if the Petitioner failed to comply. On November 7, 2013, Petitioner filed an “Application for Leave to Proceed *In Forma Pauperis*” (Doc. #6) that does not contain a certified statement by an authorized prison official of his institutional account(s). Therefore, the Application does not cure the deficiencies in his initial application. As of this date, Petitioner has failed to cure the deficiency by either submitting an application to proceed *in forma pauperis* that complies with 28 U.S.C. §1915 and Local Civil Rule 3.3 or paying the \$5.00 filing fee or filing the proper §2254 form.

Petitioner's lack of interest in complying with the Court's Order combined with the Court's attempt to manage and control its caseload warrant a dismissal of the action without prejudice. Brandenburg v. Beaman, 632 F.2d 120, 122 (10th Cir. 1980) (*per curiam*), cert. denied, 450 U.S. 984 (1981).

RECOMMENDATION

In view of the foregoing, the undersigned recommends that the Petition be dismissed without prejudice. The Petitioner is advised of his right to file an objection to the Report and Recommendation with the Clerk of this Court by December 9th, 2013, in accordance with 28 U.S.C. §636 and Fed. R. Civ. P. 72. The failure to timely object to this Report and Recommendation would waive appellate review of the recommended ruling. Moore v. United States of America, 950 F.2d 656 (10th Cir. 1991); cf. Marshall v. Chater, 75 F.3d 1421, 1426 (10th Cir. 1996)(“Issues raised for the first time in objections to the magistrate judge’s recommendations are deemed waived.”).

This Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge in the captioned matter, and any pending motion not specifically addressed herein is denied.

ENTERED this 19th day of November, 2013.



GARY M. PURCELL
UNITED STATES MAGISTRATE JUDGE